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Supreme Court of the United States

No. 748

HANDY CAFE, INC.,

Petitioner,

—v.—

JUSTICES OF THE SUPERIOR COURT *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The Petitioner, Handy Cafe, Inc. prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the First Circuit entered in this case on October 25, 1957.

Citation to Opinion Below

The opinion of the Court of Appeals is reported in 248 F. 2nd 485, and is printed in the Appendix—hereto attached; *infra* pages 13-15.

Jurisdiction

The judgment of the Court of Appeals was entered on October 25, 1957. The memorandum of the District Court is found on p. 60 of the R. A. The judgment thereon on p. 61. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented

1) Whether or not the Federal Courts are bound to protect the judgments entered by them?

2) Whether or not the Courts of the Commonwealth of Massachusetts are in sufficient jurisdiction to enter in substance adjudications in bankruptcy?

3) Whether or not the defendants are completely immune from the operations of Title 42 U. S. C. sections 1983 *et seq.*?

Statement of Facts

This is an action brought by Handy Cafe, Inc., against the Justices of the Superior Court and Supreme Judicial Courts of Massachusetts for the claimed denial to the plaintiff of due process of law and equal protection under the laws required of the defendants by virtue of their offices as Justices of the Courts of the Commonwealth.

There is also the claim of abuse of jurisdiction by said defendants in assuming to themselves jurisdiction that has been reserved to the exclusive powers of the Federal Courts. Further claim is made for compliance with the law by the defendants for the reason that they have failed to give full faith and credit to the judicial determinations of the federal courts without right to deny said faith and credit.

The case background can be considered to have commenced in early 1954.

In March 1954, the plaintiff being completely solvent and doing a very good and profitable business for reasons not included in the record became subject to a petition in involuntary bankruptcy brought by several liquor wholesalers. Thereupon as part of the same general plan of destroying the plaintiff the Costello Distributing Company another liquor wholesaler, instituted an action in the Municipal Court of the City of Boston case numbered 380861. This case was commenced and prosecuted while the Petition in Bankruptcy in the Federal Court was pending (No. 264-54). The said petition was filed in the Federal Court in March 1954.

The sheriff was instructed to make service of the writ upon the wife of a former officer of the Handy Cafe, Inc. Said wife was not an officer or person in charge of its busi-

ness in March 1954 nor was her husband. The service was false and the return made into court was false. The said Costello was fully aware of the fact that Susan Bailey was no longer in any way connected with Handy Cafe, Inc. at the time of said service of process. Thereon, the declaration was filed on the return date. The said declaration was in two courts, both of which showed that no debt enforceable at law was made. Both counts were for claims illegal and void. See *J. J. Sullivan* v. *Canns Cabins, Inc.*, 309 Mass. 519. Thereafter, the case was defaulted in the absence of answer and appearance of the defendant. The defendant therein had no knowledge of the existence of the action. But the clerk failed to give the notice required by GLc. 231, section 58 of default to the Handy Cafe, Inc. Thereafter, without the knowledge of Handy the clerk of court without court order, entered a judgment without first bothering to get rid of either count in the declaration. Each was for in excess of two thousand dollars. The ad damnum was for three thousand dollars.

The clerk without leave of court entered judgment in the amount of in excess of two thousand dollars. This was entered in May about the twenty eighth, 1954. Execution was issued shortly thereafter. Demand was made for payment on June 2, 1954 but refused for the reason of the existence of the bankruptcy petition. Returnable June 10, 1954 the Court issued notice to all creditors and claimants of Handy to appear and show cause why the petition should not be dismissed. The Costello Distributing Company received its notice on May 28, 1954. It did not oppose on the date set or at any other time. Thereafter the Court dismissed the Petition in involuntary bankruptcy.

In July, 1954 the dismissal went to judgment. About the same time namely in the latter part of July Costello filed a suit seeking the same remedy as is reserved to the federal

courts in Bankruptcy, in the Superior Court for Suffolk County, case 68595 seeking a liquidating receiver.

Thereafter, for the expressed purpose of avoiding litigation and for the purpose of being left alone by Costello and others it paid to Costello about twelve hundred dollars. Thereafter said payment Costello caused the execution returned to court on March 9, 1955 with the endorsement thereon of no part satisfied. On March 9, 1955 or thereabouts the Superior Court on the strength of said execution and return and without hearing of the Handy Cafe, Inc. appointed a temporary receiver so called. Thereafter, Costello moved for an appointment of a permanent receiver. Thereupon in order to stop the situation then growing out of hand, Handy Cafe, Inc., caused the claim of Costello to be paid in full on April 18, 1955. On this date Costello delivered to Handy Cafe, Inc. President an acknowledgment of satisfaction of all claims to said date in full under seal. Thereafter on the petition still of Costello on April 25, 1955 the Court set a date for hearing a contempt petition and stated that he would hear evidence on the petition for appointment for a permanent receiver. None such was heard. Yet on May 10, 1955 in spite of the release under seal and the method used to obtain a void judgment and execution the Court appointed a permanent receiver of the assets of Handy. He attempted to liquidate them later. Other than the so-called hearing of April 25, 1955 the Court refused to hear the merits of the case whatever. It refused substitution of bond, cash securities of any kind for the property it was then destroying. It refused Handy all protection whatever. Petitions of all kinds were filed and without hearing denied in the Superior Court. Petitions of all possible kinds were filed in the Supreme Judicial Court and orders of notice thereon completely denied. One suit was heard on relief under chapter 214

of the GL sec. 22 and this was denied although no reason appeared therefor.

Stay orders were entered in case 68595 so that appeal could not be perfected. Stay orders were issued so that all proceedings in said case were stopped and prevented. Cross actions by Costello and the Sheriff were stayed by orders of the Court. A petition for writ of audita querela was sought and that proceedings were ordered stayed by the defendants. A petition to vacate the judgment was stayed until the present after the court found that he could not consider the lack of notice of the original process. The Supreme Judicial Court Spalding *J.* stated that he was in error and that upon a petition to vacate the judgment the Court could consider a lack of original service of process and that the parties were not bound by a false return of the sheriff. Thereafter for many many months no hearings have been had on the said petition and they are stayed. A petition for writ of error was filed in the Supreme Judicial Court. The Judge denied it for the reason of the pendency of the petition to vacate judgment. A bill of exceptions was held for over fourteen months without action thereon.

Application made to the full court resulted in the answer that the matter is interlocutory only and that relief cannot be given until the main case is presented. The main case is stayed in the Superior Court and therefore cannot be presented to the full court. Motions to dismiss for lack of jurisdiction in the Court because in conflict with the Bankruptcy Act has met the same fate of stay. The motion to dismiss for res adjudicata has likewise met the same fate. It is stayed. The business of Handy Cafe, Inc. has been destroyed. The losses are almost complete destruction.

All attempts to obtain hearings are stopped before they get anywhere.

Petitions for mandamus have been offered at least twenty times.

Not a single order of notice thereon has issued. Appeals have been prevented. Reviews rendered impossible. Therefore application is made to this Court. The defendants have admitted the factual situation by their motion to dismiss for failure to state a cause of action upon which relief can be given. Therefore, there is no issue of fact.

The record contains a few excerpts from the State Courts. The record could well contain the petitions in many applications for protection made by Handy and refused by the Courts. But the few samples will be sufficient to demonstrate the conditions prevailing throughout.

Reasons for Granting of the Writ

I

The plaintiff herein is the respondent in bankruptcy petition 264-54 at the District Court of the United States for the District of Massachusetts. The said Petition after hearing was dismissed. The dismissal became a judgment. But the State Courts refused to accord the dignity of res judicata to said judgment. The said Courts received what in substance was a petition in bankruptcy. See page 29 of the record appendix. The said State Courts upon the same claims as were made in the Federal Court upon which dismissal was ordered, entered decrees of appointment of receiver in substance, an adjudication in bankruptcy. It appears to the Petitioner that the Federal Courts are bound to protect their jurisdiction and their judgments.

If the State Courts can with impunity override the judgment of the Federal Court, where is the protection of the people gone? Here the State Courts after judgment of the Federal Courts entertained what in substance was a petition in bankruptcy and in effect adjudicated the petitioner herein a bankrupt. The Petitioner asks the protection of the Federal Courts to the judgment of dismissal entered in its favor in the District Court of the United States for the District of Massachusetts in case 264-54. See R. A. 19.

II

It is accepted law that the Courts of the United States have exclusive jurisdiction in bankruptcy matters. The action of the State Courts in entertaining the bill of complaint R. A. 55 and appointing a receiver thereon is the equivalent of adjudicating the Petitioner herein into bankruptcy. This appears contrary to all laws.

III

The civil rights provisions of the U. S. C. seem to be binding upon the officers of any state, who deny to the subjects thereof their inalienable civil rights. There are decisions on both sides of the issue. However, it appears that there must be some limit beyond which the judges of the State Court cannot go in the exercise of their powers of office.

Here the said State Court entered judgment without notice and opportunity to be heard. These are fundamentals to their exercise of any jurisdiction to adjudicate. See complaint filed, R. A. p. 2. The facts stated are completely admitted by the filing and hearing of the motion to dismiss for failure to state a claim, upon which relief could be granted. See R. A. 60.

The Court of Appeals very summarily sustained the District Court.

If the people of Massachusetts have no right to seek the protection of the Courts of the United States, when their own Justices refuse them the very essentials of due process of law, where are they to turn for protection. It may be argued that they may proceed through the State Courts and have the ultimate decision of the State Courts reviewed by the Supreme Court of the United States. But this would be impossible when as here appears three years have gone by and the State Courts still refuse to hold hearings upon the claims of the Petitioner and refuse all applications for protection by the simple means of refusing to hear any application from it for any purpose. See R. A. 8. 55, 50, 45, 39.36. In not a single instance was the petitioner able to obtain any hearing upon merits whatever.

Certainly, there is no possible method of obtaining justice when hearings are denied on merits as constantly and completely as here appears. From the start to the finish Handy Cafe, Inc. has never had an opportunity to be heard upon its rights and has been stripped of its complete assets. If there ever was need for federal protection the Petitioner is surely deserving of it.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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For the Petitioner

January 18, 1958

APPENDIX A

§2283. Stay of State court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

§1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction. As amended May 24, 1949, c. 139, §90, 63 Stat. 102.

§1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or

usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. As amended Sept. 3, 1954, c. 1263, §42, 68 Stat. 1241; Sept. 9, 1957, Pub. L. 85-315, Part III, §121, 71 Stat. 637.

APPENDIX B

Angus M. MacNeil, Somerville, Mass., for appellant.

Edward F. Mahony, Asst. Atty. Gen., with whom George Fingold, Atty. Gen., was on brief, for appellees.

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*.

PER CURIAM:

This is an appeal from a judgment dismissing a complaint, as amended, for failure to state a claim upon which relief could be granted.

On March 21, 1957, Handy Cafe, Inc., a Massachusetts corporation, filed its complaint under the Civil Rights Act (42 U. S. C. A. §1983) and under the jurisdictional Act pursuant thereto (28 U. S. C. §1343). The defendants, not named, were described in the complaint as "the members of the Superior Court and Supreme Judicial Court of the Commonwealth of Massachusetts." It was alleged that by various acts and omissions of the defendants, under color of their respective offices, the plaintiff had been deprived of its property without due process of law and had been denied the equal protection of the laws, contrary to the Fourteenth Amendment. The prayer of the complaint was that the federal court issue the required orders and directions to the defendants requiring that they comply with the provisions of the laws and Constitution of the United States by supplying to the plaintiff that measure of due process of law required; that the defendants be directed to supply to the plaintiff herein equal protection under the laws with that supplied to other litigants in the courts of Massachusetts; that the losses caused the plaintiff by the wrongful actions of the defendants be ascertained and

adjudicated and that judgment be entered therefor; that the federal court enjoin the defendants from further depriving the plaintiff of its constitutional rights; and for other appropriate relief.

[1] This case is really ruled by our decision in MacNeil Bros. Co. v. Justices of the Superior Court, 1 Cir., 1957, 242 F. 2d 273, certiorari denied 78 S. Ct. 48.

[2] There is the added circumstance that certain proceedings were had in the Municipal Court of the City of Boston while a bankruptcy proceeding was pending in the United States District Court. It is asserted that the state court proceeding was in derogation of the exclusive jurisdiction of the federal court in matters of bankruptcy and that such court of bankruptcy should enter the necessary orders to maintain its jurisdiction. Granting that the federal district court, as a court of bankruptcy, had power to issue appropriate orders to the state courts to preserve its exclusive jurisdiction in the bankruptcy proceeding, the exercise of this power was never applied for, so far as appears, in such bankruptcy proceeding. It does appear that the federal district court dismissed the bankruptcy proceeding on June 11, 1954. This proceeding is an independent suit against individual officials of the State under the Civil Rights Act.

[3] In so far as it may be contended that the judgment of dismissal of June 11, 1954, of such bankruptcy proceeding operated as res judicata of various issues raised in subsequent proceedings filed in the Superior Court of Massachusetts, this, of course, is a matter of affirmative plea by way of defense in the state court.

[4] In addition to the foregoing, we are bound to observe that we know of no authority to the effect that "the members of the Superior Court and Supreme Judicial Court of the Commonwealth of Massachusetts" constitute

suable legal entities. Action under the Civil Rights Act must be against the individual persons or officials who, under color of their respective state offices, subject a person to denial of federal constitutional rights. There are over thirty judges of the Massachusetts Superior Court throughout the Commonwealth and seven justices of the Supreme Judicial Court. Obviously not all of these persons could have been concerned with the various state court proceedings herein complained of. It does not appear against which individuals judgments for damages and enforcement orders are sought to be issued.

All in all, we regard this as a completely preposterous case.

A judgment will be entered affirming the judgment of the District Court.